86 - 1309
No.

In The

Supreme Court of the United States

October Term, 1986

AUREA APONTE CARATINI,

Petitioner,

vs.

DR. OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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EDITOR'S NOTE

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QUESTIONS PRESENTED

1. Does the Federal Court of Appeals err when they violate the due process of law to the petitioner denying her opportunity to review decision she is entitled to in the same manner as other Social Security disability cases?

2. Does the court below err by holding that the secretary's denial of petitioner's Social Security disability benefits is supported by substantial evidence?

LIST OF PARTIES

The parties to the proceeding below were the petitioner, Aurea Aponte Caratini, and respondent, Secretary of Health and Human Services, Dr. Otis R. Bowen, represented by Honorable Charles Fried, Solicitor General, Department of Justice, Washington, D.C. 20530. Pursuant to the Social Security Act, he is responsible for the determination of disability under Title II disability programs, including the promulgation of standards, regulations and guidelines for the determination of whether a claimant is disabled within the meaning of the Social Security Act.

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NO. 86-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

AUREA APONTE CARATINI,

Petitioner,

V.

DR. OTIS R. BOWEN,
SECRETARY OF HEALTH AND HUMAN SERVICES

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner, Aurea Aponte Caratini, respectfully prays to this Honorable Court that a writ of certiorari be issued to review the order of the United States Court of Appeals for the First Circuit entered in this case on September 15, 1986. No petition for rehearing was filed.

OPINIONS BELOW

The order of the Court of Appeals, not for publication, Civil Action Number 85-1925, is reprinted in the Appendix hereto, p. 1(a), 13 pages, infra.[1]

No petition for rehearing was sought.

On September 17, 1985 the District Court for the District of Puerto Rico rendered an order affirming the Secretary's decision denying petitioner her disability insurance benefits. Civil Action No. 84-2056 (R.L.A.), is reprinted in the Appendix hereto, p. 14(a), 3 pages, infra. Judgment entered same date is reprinted, p. 17(a), infra. Federal Rules of Civil Procedure 79(a).

---

1. After one year of the decision of the District Court.

On February 24, 1984 the Administrative Law Judge before whom a hearing was held on February 6, 1984, rendered a notice of decision-denial. She found that Mrs. Aponte suffers from a combination of exertional and non-exertional impairments which do not meet, or equal an impairment listed in Appendix I, Subpart P, Regulations No. 4, Secretary's Regulations; but which preclude Mrs. Aponte from returning to her past semi-skilled relevant work. It is reprinted in the Appendix hereto, p. 18(a), 4 pages, infra.

The Administrative Law Judge's denial decision became the final decision of the Secretary of Health and Human Services when the Appeals Council on May 18, 1984 sustained the denial decision of the Administrative Law Judge. It is reprinted in the Appendix hereto, p. 22(a), 1 page.

JURISDICTION

Invoking federal jurisdiction under 42 U.S.C.A. Section 405(g), as amended, the petitioner brought this appeal in the United States District Court for the District of Puerto Rico. On September 17, 1985 the Court denied the appeal (p.3, 14(a), infra).

The petitioner appealed before the United States Court of Appeals for the First Circuit and on September 15, 1986 the court entered judgment affirming the decision of the District Court (p. 1, 13(a), infra).

On November 21, 1986 petitioner filed a notice of appeal before this Honorable Court. It is reprinted in 23(a), 3 pages.

On 2nd day of December 1986, Honorable William J. Brennan, Jr. Associate Justice of the Supreme Court of the United States

ordered that the time for filing this petition for writ of certiorari be extended to and including February 12, 1987 (A418, p. 26a, infra).

This Court's jurisdiction is invoked under 28 U.S.C.A. Section 1254(1) and 42 U.S. C.A. Section 405(g).

CONSTITUTIONAL, STATUTORY AND REGULATIONS PROVISIONS INVOLVED

The Constitutional, Statutory and Regulations provisions which are relevant to decision of this case are Amendments V, which provides in part:

> "No person shall... Be deprived of life, liberty or property, without due process of law..." and Amendment XIV Section provides in part:
>
> "....Nor deny to any person within its jurisdiction the equal protection of the laws....."

Judicial review of cases arising under Title II of the Social Security Act, as amended, is provided for in Sections 205(g)

of the Act, 42 U.S.C.A. Section 405(g) in pertinent part provides:

"(g) ... The judgment of the Court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions....."

Section 223(d)(1)(A) of the Social Security Act, 42 U.S.C.A. Section 423(d)(1)(A) provides in part:

(d))1) The term "disability" means-

"(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or ..."

Congress authorizes the promulgation of regulations to the Secretary of Health and Human Services, who in turn delegates the authority to the Social Security Administration. The S.S.A. promulgates regulations as part IV and published in the Federal Register under 20 C.F.R. Sections 404 et seq.

STATEMENT OF THE CASE

This petitioner seeks to review the order of the Court of Appeals for the First Circuit affirming the judgment of the District Court.

On February 6, 1984 a hearing was held before an Administrative Law Judge. No medical advisor nor a vocational expert testified. Petitioner testified about her low back pain, emotional condition and poor vision. She spent her time at her mother's house. She quit working due to a work related accident covered by the Workmens' Compensation Act, State Insurance Fund, San Juan, Puerto Rico. She felt that her nerves were bad because everything bothered her, when people look at her, bothers her, she is unable to sleep. She fights with her husband, daughters, has a lot of nightmares. She is unable to speak to anyone.

She is unable to cook.

Mrs. Aurea Caratini de Aponte, petitioner's mtoher, testified during the hearing held on February 6, 1984. She stated that:

A.L.J. Is there anything that you want to clarify as to what she said? Is there anything that is not correct about anything that she said?

A. Everything she's said has been correct. I have to give her her meals because since she (INAUDIBLE).

A.L.J. Yes,I know that you feel bad but try to control yourself, you know.

A. Well, her nerves are bad. She is very ill...she can't cook, she can't...because she burns herself all the time she hurts herself.

I notice that the pain that she complains a lot of...her brain, that -- it is like as if ---

A. Yes, because she doesn't coordinate anymore. Talking. She forgets things. And she is a very brilliant girl.

> A girl who studied--at age 15 she had already graduated from 12th grade of High School--and the truth is that instead of getting better every day, she gets worse---huh?
>
> Yes, and she couldn't work anymore....."

Her testimony was not evaluated or discussed by the Administrative Law Judge nor the Appeals Council.

On July 9, 1984 petitioner filed a complaint before the U.S. District Court for the District of Puerto Rico. Docket fee was paid. Civil Action Number 85-2056.

On November 21, 1984 respondent filed an answer to the complaint.

On October 9, 1984 Congress approved the Social Security Disability Benefits Reform Act of 1984,Public Law No. 98-460, 98 STAT 1794 (1984).

Petitioner's mental condition was not evaluated according to the new law.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I(a) Considering only that the mental impairment is covered by the Social Security Disability Benefits Reform Act of 1984, Public Law No. 98-460 dated October 9, 1984, 98 STAT 1794 (1984).

"Congress took a different approach in cases involving individuals who have mental impairments. It provided that any person who had sought benefits based on a mental impairment and who was found to be not disabled on or after March 1, 1981, could reapply to the Secretary and be reevaluated under these standards."

City of New York, et al v. Secretary of Health and Human Services, (D.C.E.D. 1985), 578 F.Supp. 1109 (2nd Cir. 1985), 742 F.2d 729, 106 S.Ct. 2022, 2025.

The case of Mason v. Bowen, (C.A. 11, 1986) 791 F. 2d 1460, 1462 the Court stated at page 1462:

"....In 1984 Congress established a new and temporary standard for evaluation subjective evidence of pain 42 U.S.C.A. Section 423(d)(5)(A). This Circuit has held that Congress intended the new standard to apply to all cases then pending either before the Secretary or the Courts. This Court examined the relative legislation history and determined the effect of this change in the law ..." (quoting W. Rep. No. 466, 98th Cong., 2d Sess. 24).

Case of Caulder v. Bowen, (11th Cir. 1986), 791 F. 2d 872, 879. The court stated at page 879:

"This Court recently has restated the standard of review for subjective allegations of pain in light of Section 3(a)(1) of the Social Security Disability Benefits Reform Act of 1984, Public Law No. 98-460 dated October 9, 1984, 98 STAT 1794. The Secretary as well as the District Court are, of course, bound to apply the standard articulated in the new legislation."

Above cases are applicable to this case at bar.

This Honorable Court should consider whether the due process requirements for a full and fair review and the equal protection of law were violated in this case,

rights protected by the Fifth Amendment of the Constitution of the United States. Morgan v. United States, 289 U.S. 468 (1936).

"It is well settled that Disability Insurance Benefits are subject to procedural due process protections".

Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

In the case of S.E.C. v. Chenery Corp. 318 U.S. 80, 94, 63 S.Ct. 454, 462, 87 L. Ed. 626, the court stated:

"Courts cannot exercise their duty of review unless they are advised of the consideration underlying the action under review... The orderly functioning of the process of review requires that the grounds upon which the Administrative Agency acted be clearly disclosed and adequately sustained."

In this case respondent applied improper legal standards when they failed to consider the Social Security Disability Benefits Reform Act that became effective during the pendency of the case.

(b) The United States Court of Appeals for the First Circuit rendered a decision in conflict with the decisions of other circuits in the cases of: Caulder v. Bowen, supra; Lewis v. Weinberger, (4th Cir. 1976), 541 F.2d 417-420; Lewis v. Weinberger, (5th Cir. 1975), 515 F.2d 584, 587; Hephner v. Mathews, (6th Cir. 1978), 574 F. 2d 259; and 42 U.S.C.A. Section 405(b), in pertinent part provides:

"(b) The Secretary is directed to make findings of fact and decision...."

Puerto Ricans are United States citizens (see, 8 U.S.C.A. Section 1402).

"Puerto Rico is subject to the Due Process Clause of either the Fifth or Fourteenth Amendment."

Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S.663, 668-669, n. 5 (1974).

"Puerto Rico is subject to the equal protection guarantee of either the Fifth or the Fourteenth Amendment." Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976).

II. Does the court below err by holding that the Secretary's denial of petitioner's Social Security Disability Benefits is supported by substantial evidence.

The First Circuit in its denial decision considered the case "DE NOVO" and not in accordance with the court's standard of review as to whether there exists substantial evidence in the record to support the Secretary's findings [see 42 U.S.C.A. Section 405(g)]. Under this standard, the question is whether the record contains "such relevant evidence as a reasonable mind might accept as adequate to support

a conclusion." Richardson v. Perales, 402 U.S. 399, 401, 91 S.Ct. 1420, 1427; 28 L. Ed.2d 842 (1971), quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229, 59 S.Ct. 206, 216, 83 L.Ed. 126 (1938).

The court below misapplied medical-vocational guidelines in determining that petitioner, who is suffering from an emotional condition, poor vision and low back pain, was able to perform work which existed in the national economy where there was no finding as to whether or how much petitioner work capability was further diminished in terms of any type of job that would be contraindicated by nonexertional injuries in light of medical evidence in the record.. Sections 404.1520(a) thru (f) of the Secretary's Regulations (20 C.F.R.Sections 404.1520(a) thru (f) 1986). Bowen v. City of New York et al, supra, at page 2025.

Exertional impairments are impairments which limit physical activities.

Nonexertional impairments, however, includes mental disorders, dermatological disorders and sensory disorders. Accordingly, nonexertional impairments, can include such things as dizziness, blurred vision, defective hearing, inability to use the hands and inability to bend, stand, twist, reach and climb, inability to get along with fellow workers and supervisors, inability to sustain attention, inability to understand and retain instructions, inability to exercise acceptable judgment, and inability to independently perform routine repetitive tasks. (Emphasis added). Gagnon v.Secretary of H.E.W. (1st Cir.1981) 666 F.2d 662, 665. [See Sections 404.1545(c) and (d) of the Secretary's Regulations, 20 C.F.R. Sections 404.1545(c) and (d)].

On April 10, 1984 the State Insurance Fund, San Juan, Puerto Rico, issued a decision:

Diagnosis:

"Dysthymic disorder, moderately severe type in a hysterical personality, related." It is reprinted at p. 27(a) infra.

"The finding of another agency regarding disability is not binding upon the Secretary, but that decision must be considered."

McCann v. Califano, (C.A. 6, 1980), 621 F. 2d 829.

"The failure of the Administrative Law Judge to consider the disability findings of another agency is improper. The A.L.J. is not required to accept other determination, but must consider it."

Fowler v. Califano, (C.A.3, 1979) 596 F.2d 600.

Dr.Fausto Jimenez Blazquez is petitioner's treating psychiatrist since the year 1979. His diagnosis:

"Anxiety disorder with depressive component, moderate severe and hysterical personality."

These psychiatric reports were not rebutted nor discredited by respondent.

The Administrative Law Judge in her findings number 11, stated:

"(11) The claimant is unable to perform her past semi-skilled relevant work as laboratory helper."

"Once the claimant has established a prima facie case by showing that her impairments prevent her return to her prior employment, the burden shifts to the Secretary, who must produce evidence to show the existence of alternative employment which the claimant could perform considering not only his physical capability, but as well, his age, education, work experience, and training."

Carroll v. Secretary of H.H.S. (2nd Cir. 1983), 705 F.2d 638; Livington v. Califano, (C.A.3, 1980), 614 F.2d 342; Allen v. Califano, (C.A. 6, 1980) 613 F.2d 139.

The respondent failed to submit evidence, such as the testimony of a vocational expert or medical advisor. Section 404.1517 of the Secretary's regulations [20 C.F.R. Section 404.1517 (1986)].

"Administrative Law Judges are not medical experts, their functions are to gather and weigh evidence not to make diagnoses." Aubeuf v. Schweiker, (2nd Cir. 1981), 649 F.2d 107, 113; Hassler v. Weinberger, (7th Cir. 1974) 502 F.2d 172, 178; Lund v. Weinburger, (8th Cir. 1975), 520 F.2d 782, 785.

During the hearing no medical advisor testified.

Section 2(a), Section 223(f) of the Social Security Act is amended to read as follows:

"(d)(1) The amendments made by this Section shall apply only as provided in this subsection."

(2) The amendments made by this Section shall apply to

(A) .....

(B) .....

(C) determinations with respect to which a request for judicial review was pending on September 14, 1984 and which involve an individual litigant....."

Petitioner meets above determination.

CONCLUSION

Petitioner respectfully prays to this Honorable Court that she is entitled to the equal protection of law as expressed by the Fifth Amendment, pursuant to the Social Security Disability Benefits Reform Act. The Act requires remand of her mental im-

pairment claim for redetermination in accordance with the revised procedures for evaluating such claims. Padilla v. Heckler, (S.D.N.Y., 1986), 643 F. Supp. 481, 486.

RESPECTFULLY SUBMITTED,

s/ Rafael Carreras-Valle
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February 6, 1987

NO. 86-

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

AUREA APONTE CARATINI,
Petitioner,

V.

DR. OTIS R. BOWEN,
SECRETARY OF HEALTH AND HUMAN SERVICES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

CERTIFICATE OF SERVICE

I, Rafael Carreras-Valle, Esquire, a member of the Bar of this Court, hereby certify that on this 6th day of February, 1987, three copies of the petition for writ of certiorari in the above-entitled case was mailed, first class postage prepaid to:

Hon. Charles Fried
U.S. Solicitor General
Department of Justice
Washington, D.C. 20530

s/ Rafael Carreras-Valle
RAFAEL CARRERAS-VALLE, ESQ.
COUNSEL FOR PETITIONER

A P P E N D I X

A P P E N D I C E S

PAGES

(NOT FOR PUBLICATION)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1925

AUREA APONTE CARATINI,
Plaintiff, Appellant,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

(Hon. Raymond L. Acosta, U.S. District Judge)

Before

Campbell, Chief Judge,

Breyer and Torruella, Circuit Judges.

Rafael Carreras-Valle on brief for Appellant. Debra L. Hollis, Office of the General Counsel, Social Security Division, Department of Health and Human Services, Daniel F. Lopez Romo, United States Attorney, Wanda Rubianes-Collazo, Assistant United States Attorney, Randolph W. Gaines, Deputy Chief Counsel for Social Security Litigation, and A. George Lowe, Chief, Disability Litigation Branch, on brief for appellee.

September 15, 1986

1(a), 13 pages

Per Curiam. Claimant Aurea Aponte Caratini filed an application for Social Security disability benefits alleging neck and back problems, pain, visual impairment, and a nervous condition. After a hearing, the ALJJ found claimant not disabled. The ALJ conceded that claimant had a severe impairment or impairments that precluded her return to her former work, but found that claimant retained the residual functional capacity to perform sedentary work. Accordingly, the ALJ applied Rule 201.21 of the Medical-Vocational Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2 ("the grid") to reach a finding of not disabled. The ALJ evaluated claimant's several nonexertional impairments (pain, vision, anxiety) and found that they did not significantly affect her ability to perform the full range of jobs requiring

sedentary work. After the Appeals Council denied claimant's request for review of the ALJ's decision, claimant appealed to the district court, which affirmed the Secretary. On appeal to this court, Claimant contends that the Secretary misapplied the grid and that the Secretary's decision is not supported by substantial evidence. We affirm.

In Gagnon v Secretary of Health and Human Services, 66 F.2d. 662, (1st. Cir., 1981), and again in Perez Lugo v Secretary of Health and Human Services, 794 F.2d. 14 (1st.Cir.,1986), this court approved the procedure set out by section 200.00(e)(2) of Appendix 2 to Subpart P, 20 C.F.R. Part 404, to be followed in applying the grid when both exertional and non-exertional impairments are alleged. The regulations state,

> "However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be ontraindicated by the nonexertional limitations."

The Secretary properly followed this analysis in that he applied the grid only after determining that claimant's non-exertional impairments did not significantly affect claimant's ability to perform the full range of jobs requiring sedentary work. See Perez Lugo, supra, 794 F.2d. at 17; Borrero Lebron v Secretary of Health and Human Services, 747 F.2d. 818 (1st.Cir.1984).

We find, furthermore, that this determination was amply supported by substantial

evidence of record. The ALJ found that claimant's complaints of neck, back, and arm pain "are credible to the point where the pain is a cause of discomfort for her... (but the pain cannot be considered as severe or disabling in nature." We agree that the record contains substantial evidence to support a finding that claimant's back problems, while a source of some pain, do not significantly affect her ability to perform the full range of jobs requiring sedentary work. Medical reports found mild cervical fibromyositis and a congenital fusion of vertebral bodies, but found "no motor, senrory or reflexes abnormalities", no motor weakness or atrophy , and no limitation of movement. Physicians noted "tenderness to palpation to both trapezius", but made no findings of severe or disabling pain. Claimant stated in April 2, 1982 and February 8, 1983 disability reports that she

shares housework with her daughter, takes care of her personal needs and of house plants, visits relatives, and uses public transportation. As the ALJ noted, one medical report stated that claimant was not receiving treatment for her alleged pain. Thus, both objective medical findings and evidence as to claimant's daily activities and medical treatment support the ALJ's finding. "Generally, when an individual has suffered severe pain for a long time, there are observable signs such as drawn features, and atrophy due to disuse for the purpose of avoiding discomfort, as well as a medical history replete with efforts to alleviate pain." Thompson v Califano, 556 F.2d. 616,617 (1st. Cir. 1977).

Nor can we quarrel with the Secretary's treatment of claimant's alleged vision problem. While claimant apparently has been legally blind in her right eye since birth,

medical reports state that her vision is 20/20 in her left eye, even without correction, and that her left eye is "normal". There can be no doubt that this meical evidence adequately supports the Secretary's finding that claimant's vision problem does not prevent her from performing the full range of sedentary work.[1]

Claimant's mental impairment, too, does not appear substantial according to the evidence of record. In a June 14, 1983 report, her treating psychiatrist found her coherent, in contact with reality, oriented as to person, place and time, with normal course and content of thought, and with immediate memory not affected. He found her intellectual functions "(n)ot affected, but she has less power of concentration." He concluded that she suffered an "(a)nxiety disorder with depressive

1. Certainly claimant did not, as she now contends, establish blindness under 20 C.F.R. S 404.1581, which defines blindness as "central visual acuity of 20/200 or less in the better eye."

component." Again, claimant herself stated in disability reports that she shares housework with her daughter, takes care of her personal needs and of house plants, maintains social contacts, and uses public transportation. Accordingly, the Secretary had substantial evidence to support the conclusion that claimant's mental condition did not significantly affect her ability to perform the full range of sedentary work. See Borrero Lebron v Secretary of Health and Human Services, 747 F.2d. 818 (1st.Cir.1984).[2] Given the above-quoted psychiatric report, the Secretary was not bound to accept the later conclusion of the same psychiatrist--- set forth in a letter written "at the request of the patient" shortly before the ALJ rendered his decision -- that claimant "is not able at this time to do substantial or lucrative work."

2. For the same reason, the Secretary was justified in finding that claimant's mental impairment was not a listed impairment under S 12.04 of 20 C.F.R. Part 404, Subpart P, Appendix 1.

For the reasons stated above, we further conclude that the record contains substantial evidence that all of claimant's non-exertional impairments, considered in combination, do not significantly affect her ability to perform the full range of sedentary work.

The Secretary, having found claimant's non-exertional impairments not significant, correctly applied the grid to assess her exertional impairment (neck and back problems) and reach a finding of not disabled. We find no lack of substantial evidence for the Secretary's finding that claimant can perform sedentary work despite her exertional impairment. The Secretary's Regulations define sedentary work as follows:

"Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking

and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met."

20 C.F.R. S 404.1567(a). A residual functional capacity assessment submitted by an examining physician stated that claimant could stand, walk, and sit eight hours, but omitted any finding as to claimant's ability to lift and carry. Even without these findings, however, there is substantial evidence in the record that claimant retains the strength to meet the minimal lifting and carrying requirements of S 404.1567(a), since medical reports stated that claimant exhibited no motor weakness or atrophy, no muscle spasm in the back, normal range of motion in the neck and back, and "no motor, sensory or reflexes abnormalities."[3]

3. This medical evidence supports the Secretary's finding that claimant's back and neck problems do not constitute a listed impairment under S 1.05 of 20 C.F.R. Part 404, Subpart P, Appendix i.

Claimant further asserts that the Secretary erred in applying S 201.21 of the grid to find her not disabled, since S 201.21 governs the 45-49 age group and claimant was 43 years old at the beginning of the claimed period of disability. However, any error was harmless since application of S 201.28 of the grid, governing the 18-44 age group, also results in a finding of not disabled.

Finally, claimant contends that the Secretary erred in failing to consider two decisions of the State Insurance Fund of the Puerto Rico Department of Labor--one issued before the ALJ's decision herein, the other issued shortly after it--that she was entitled to workmen's compensation for her mental condition. In support she cites Fowler v Califano, 596 F.2d.600, (3d. Cir.1979), which holds that an ALJ

must give consideration to state findings of disability. Although it is true that the ALJ's decision made no exppress mention of any State Insurance Fund award, the ALJ gave full consideration to the same claimed impairment -- anxiety and depression -- relied on by the State Insurance Fund. Furthermore, neither State Insurance Fund decision contained any articulation of reasons for an award of benefits that, if given fuller consideration, could have influenced the Secretary's determination. Instead, both state decisions announced an award in conclusory fashion, with minimal findings. It is well-settled, also, that determinations made by other agencies are not controlling on the Secretary. 20 C.F.R. S 404.1504; Small v Califano, 565 F.2d.797, 799 (1st.Cir.1977). Under all the circumstances, therefore, and given the manifest

adequacy of the record support for the Secretary's conclusions, we conclude that we need not remand to the Secretary for fuller consideration of the State Insurance Fund decisions.

We have considered claimant's other contentions and find them meritless.

The judgment of the district court is affirmed.

IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

AUREA APONTE, Plaintiff	:	
V.	:	CIVIL NO. 84-2056(PLA)
SECRETARY OF HEALTH AND HUMAN SERVICES, Defendant.	:	

O R D E R

After a thorough consideration of all the evidence in this case, as well as the Secretary's findings, and the issues presented by this appeal, this Court concluces that the Secretary's determination is supported by substantial evidence in this record.

The Secretary found that plaintiff could not return to her past work, but that she could perform light to sedentary work where she could alternate positions; primarily, deal with objects and peform simple, routine, repetitive and unskilled tasks. Applying

the table for sedentary work of the Medical-Vocational Guidelines, the Secretary concluded that plaintiff is not disabled. While the Secretary has further diminished plaintiff's capacity to perform the full range of light to sedentary work in which case is better to stay away from the Grid, the Secretary has played safe by applying the table for sedentary work. It has been recognized that the "Grid does not assume that a 'not disabled' claimant is equally suited to perform any and all jobs thought to exist in the national economy for the set of claimants with similar age, education, experience and residual capacity characteristics. It assumes merely that enough jobs are available for such claimants that, in all likelihood, there will be at least some jobs that each such claimant can perform." Sherwin v Secretary of Health

and Human Services, 685 F.2d. 1 (1st.Cir. 1982).

Wherefore, in light of the applicable law and jurisprudence, the Secretary's decision is hereby affirmed. Judgment shall be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 17th. day of September 1985.

(s) RAYMOND L. ACOSTA
(s.t.) RAYMOND L. ACOSTA
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AUREA APONTE, Plaintiff,	:	
v.	:	CIVIL NO. 84-2056(RLA)
SECRETARY OF HEALTH AND HUMAN SERVICES Defendant.	:	

J U D G M E N T

The Court having found that the decision of the Secretary of Health and Human Services is supported by substantial evidence in the record, and the Court having affirmed its decision,

It is ORDERED and ADJUDGED tha the above-captioned action be and the same is hereby dismissed.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 17th day of September 1985.

(s) RAYMOND L. ACOSTA

(s.t.) RAYMOND L. ACOSTA
United States District Judge

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration, Office of Hearings and Appeals

Name and Address of Claimant:

Mrs. Aurea Aponte
Calle Duchesne 618
Villa Prades
Rio Piedras, P.R. 00924

NOTICE OF DECISION-DENIAL

PLEASE READ CAREFULLY

This notice and enclosed copy of hearing decision mailed:

February 24, 1984

Form HA-L5023-U6 (10-82)

18(a), 4 pages

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

DECISION

IN THE CASE OF:

Aurea Aponte
(Claimant)

CLAIM FOR:

Period of Disability and Disability Insurance Benefits

580-68-7389
(Social Security Number)

This case is before the Administrative Law Judge upon a timely request for hearing. The Administrative Law Judge has carefully considered all the documents identified on the record as exhibits, the testimony at the hearing and arguments presented. After proper notice a hearing was held at Hato Rey, San Juan, Puerto Rico on February 6, 1984.

The claimant was present and testified. The claimant was represented by attorney Rafael Carreras Valle. Also present was Aurea Caratini de Aponte, claimant's mother who testified as witness.

The claimant filed an application on February 8, 1983 alleging inability to work on December 15, 1981 because of vision, back condition, nerves.

The application was originally denied on April 4, 1983 and after reconsideration on July 26, 1983.

On September 15, 1983 the claimant timely filed a request for hearing.

The claimant has not worked since at least alleged onset date.

The claimant met the special disability insured status requirements of the Act on the alleged onset date and continues to meet them through at least up to December 31,1984.

Upon examining the entire medical evidence now of record, the Administrative Law Judge finds that claimant suffers from a combination of exertional and non-exertional impairments which do not meet or equal an impairment listed in Appendix 1, Subpart P, Regulations No. 4, but which preclude claimant from returning to her past semi-skilled relevant work.

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on February 8,1983, the claimant is not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.

(s) LUZ M. TORO SOLIS

(s.t.) LUZ M. TORO SOLIS
Administrative Law Judge

February 24, 1984
Date

Refer to:
SGC
550-68-7389

Office of Hearings
and Appeals
P.O. Box 3200
Arlington, Va. 22203

May 18,1984

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mrs. Aurea Aponte
Calle Duchesne 618
Villa Prades
RIO PIEDRAS, PUERTO RICO 00924

Dear Mrs. Aponte:

The Appeals Council has concluded that there is no basis for granting the request for review. Accordingly, the hearing decision stands as the final decision of the Secretary in your case.

If a civil action is commenced, your complaint should name the Secretary of Heaalth and Human Services as the defendant and should include the Social Security Number(s) shown at the top of this notice.

Sincerely yours,

(s.t.) JOHN W. CHAMBERS
Member, Appeals Council

cc:
Rafael Carreras,Esq.
HO, HATO REY,PR (ALJ Toro Solis)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1925

AUREA APONTE CARATINI,
Plaintiff,Appellant

Vs.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant,Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that, AUREA APONTE CARATINI, the Plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the Petition for Appeal entered in action on September 15, 1986.

This appeal is taken pursuant to 28 U.S.C.A. Section 2101(c).

23(a), 3 pages

At Río Piedras, Puerto Rico,

November 21, 1986.

(s.t.) RAFAEL CARRERAS-VALLE
Counsel fro Appellant
P. O. Box 20399
Río Piedras, P.R. 00928

PHONE (809) 767-5665

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on this same date a copy of this Notice of Appeal to the Supreme Court was mailed to:

Debra L. Hollis, Esq.
Office of the General
Counsel, SS Division
650 Altmeyer Bldg.
6401 Security Boulevard
Baltimore, Md. 21235

RAFAEL CARRERAS-VALLE, Esq.
Counsel for Appellant

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the First Circuit

Francis P. Scigliano
Clerk

December 11, 1986

Rafael Carreras-Valle,Esq.
P. O. Box 20399
Rio Piedras, P.R. 00928

No. 85-1925 Aurea Aponte Caratini v. S.H.H.S.

Dear Sir:

Your notice of appeal to the Supreme Court has been received and filed.

Pursuant to a directive from the Office of the Clerk of the Supreme Court, rather than sending a copy to the Supreme Court Clerk's Office, I return to you a copy of your notice of appeal showing the date filed in this office. I am adised that you should include this copy of your notice of appeal in the appendix to your jurisdictional statement when you file that document with the Clerk of that Court.

Sincerely yours,
(s) FRANCIS P. SCIGLIANO
Clerk

SUPREME COURT OF THE UNITED STATES

No. A-418

AUREA APONTE CARATINI,
Applicant
v.
SECRETARY OF HEALTH AND HUMAN SERVICES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 12, 1987.

/s/ William J. Brennan, Jr.
Associate Justice of the
Supreme Court of the
United States

Dated this 2nd day of December 1986

Claimant: Aurea Aponte Caratini
ssan: 580-68-7389
translation

Commonwealth of Puerto Rico
STATE INSURANCE FUND
PUERTO RICO

Case Number: 72 PPD 93-3600--3

Name and Address:
Aurea Aponte Caratini
Calle Casimira Duchesne 618
Villa Prades, Rio Piedras, PR 00928

Name and Address:

Medical Center of Puerto Rico
Barrio Monacillos
Río Piedras, Puerto Rico

Accident date:	Daily wage:	Days per week:
12-20-71	12.00	6

Injury suffered:

Dysthymic disorder, moderately-severe type in a hysterical personality, rel.

FINAL DISCHARGE Date: 12-20-83 REPORTING PHYSICIAN(s):

Dr. F.R. Guillen and G. Malaret

In accordance with the record, the injured party is to be paid a compensation computed on the above-mentioned weekly wage for a period of 153 weeks, which amounts to $6,855.00.